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IN THE UNITED STATES PATENT & TRADEMARK OFFICE

IN RE APPLICATION OF :

YOSHIHIRO KIKUCHI, ET AL. :

EXAMINER: DIEP, N. T.

SERIAL NO: 09/522,950 :

FILED: MARCH 10, 2000 :

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RESPONSE TO ELECTION OF SPECIES REQUIREMENT

COMMISSIONER FOR PATENTS  
ALEXANDRIA, VIRGINIA 22313

SIR:

In response to the Election of Species Requirement dated August 21, 2003, Applicants provisionally elect with traverse Species of Figure 1, on which Claims 1 and 2 are readable.

Applicants respectfully traverse the election requirement for several reasons.

First, the outstanding Official Action fails to state any basis whatsoever in support of the restriction requirement. This violates MPEP § 816, which states:

The particular reasons relied on by the examiner for holding the inventions as claimed are either independent or distinct should be concisely stated. A mere statement of conclusion is inadequate. The reasons upon which the conclusion is based should be given ....

In the absence of any annunciated basis, it is respectfully submitted that the PTO clearly has not carried forward its burden of proof to establish distinctness.

Secondly, MPEP § 806.04(f) requires: "Claims to be restricted to different species must be mutually exclusive ...." The outstanding Official Action fails to address in any way

whether the pending claims recite mutually exclusive characteristics, and this failure provides a further basis for traversing the election requirement.

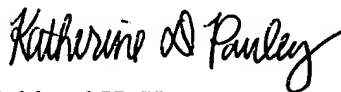
Finally, MPEP § 803 states: "If the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions."

The claims of the identified species appear to be part of an overlapping search area. Therefore, Applicants traverse the outstanding Election of Species Requirement on the grounds that a search and examination of the entire application would not place a serious burden on the Examiner.

Accordingly, it is respectfully requested that the requirement to elect a single species be withdrawn, and that a full examination on the merits of Claims 1-47 be conducted.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,  
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